

MINUTES
REGULAR MEETING – PLANNING BOARD
June 22, 2017

Minutes for the Regular Planning Board Meeting for the City of Daytona Beach, Florida, held on Thursday, June 22, 2017 at 6:00 p.m. in the Commission Chambers, City Hall, 301 South Ridgewood Avenue, Daytona Beach, Florida.

Board Members Present:

Cathy Washington, Chair
Tony Barhoo
Jeff Hurt
James Neal
James Newman
Tony Servance

Staff Members Present:

James Morris, Deputy City Manager
Richard Walton, Planning Director
Dennis Mrozek, Planning Manager
Rose Askew, Planner
Doug Gutierrez, Planner
Carrie Avallone, Assistant City Attorney
Marianne Pulaski, Planning Technician
Hannah Ward, Planner
Becky Groom, Board Secretary

1. **Call to Order**

Ms. Washington called the meeting to order at 6:00 p.m.

2. **Roll Call**

The roll was called and members were noted present as stated above.

Ms. Washington stated a revised agenda has been presented which includes an amendment to the Land Development Code. Ms. Washington asked for adoption of the revised agenda with the additional item.

Board Action:

A motion was made by Mr. Servance, seconded by Mr. Newman, to approve the revised agenda which includes an additional item of an amendment to the Land Development Code, Item 8. The motion carried unanimously.

3. **Approval of the Minutes** - May 25, 2017

Board Action:

A motion was made by Mr. Newman, seconded by Mr. Barhoo, to approve the minutes of the May 25, 2017 Planning Board Meeting, as presented. The motion was approved unanimously (6-0).

Continued Item:

4. **Appeal - Harvest Time International, Inc., DEV2017-037**

Staff Presentation:

Reed Berger, Redevelopment Director, stated he is the individual responsible for denying the Business Tax Receipt application for the subject property. Mr. Berger stated the decision is based on the decision that the proposed use is a Social Service use, not a retail use. Mr. Berger stated the Board has options: The Board can affirm the decision or interpretation that has been made by staff, in whole or in part; the Board can modify the decision or interpretation, in whole or in part; or the Board can reverse the decision or interpretation made by staff, in whole or in part.

Applicant's Presentation:

Michael Woods, Cobb & Cole, 351 E. New York Avenue, De Land, Florida, spoke representing the applicant. Mr. Woods stated the subject property is located in the Burlington Coat Factory Shopping Center at 98 N. Nova Road. Mr. Woods stated two applications were made for a Business Tax Receipt. The first application was specifically for retail use but was noted by staff that the applicant is a not for profit organization. Mr. Woods stated a second application was submitted to the City to define the site as Retail-Other. Mr. Woods stated the site will not be a social service use and is a straight retail use. Mr. Woods stated since Harvest Time is the operator of the site that does not in itself make it a social service. Mr. Woods stated there have been discussions with staff about the use based on the operations of Harvest Time International at its Port Orange location. Mr. Woods stated the proposed site will be similar to a Big Lots or TJ Maxx.

Roger LeBlanc, 17920 Fieldbrook, Boca Raton, Florida, was sworn in to give testimony. Mr. LeBlanc stated he is one of the owners of Midtown Plaza. Mr. LeBlanc stated he has been in the leasing and development side of commercial properties for 37 years and has listed over 6,000,000 s.f. of space to national, regional, and local tenants. Mr. LeBlanc stated there is a national tenant, Burlington Coat Factory, currently located in the shopping center and there are very specific uses outlined in their lease of what is permitted and what is not

permitted in the shopping center. Mr. LeBlanc stated social service use is one of those uses. Mr. LeBlanc stated he has had conversations with Harvest Time International and it is stated in their lease that the site will be for retail use. Mr. LeBlanc stated a soup kitchen or warehouse would place him in default of the lease with Burlington Coat Factory. Mr. LeBlanc stated he has spent 8 years looking for a tenant for this site. Mr. LeBlanc stated several companies have approached him about leasing the site but many of those that were interested in the site would place him in violation of the lease with Burlington Coat Factory.

Mr. Woods asked what is the term for the proposed lease.

Mr. LeBlanc stated the term of the lease is for 10 years and Harvest Time International will pay full market rent. Mr. LeBlanc stated Harvest Time International will pay taxes. Mr. LeBlanc stated a pure retail concept is new for Harvest Time International and the site is a for profit concept.

Daniel Ting, Harvest Time International, 7462 Aprelle, Sanford, Florida, was sworn in to provide testimony. Mr. Ting stated the proposed site will be 100% retail and will be different than any of their other locations. Mr. Ting stated the site will be a 100% taxable business with 100% retail.

Mr. Woods asked if overstock items will be presented and Mr. Ting said yes.

Mr. Woods asked how many individuals will be employed.

Mr. Ting said there will be 7 or 8 full-time and some part-time employees, as needed.

Mr. Woods stated there was work done at the site and asked for the amount of investment that has been made.

Mr. Ting stated there has already been an investment of \$100,000 in capital improvements, including the cement columns, flooring, walls, shelving, cash registers, conveyor belts, and it is planned to do an additional \$100,000 investment.

Mr. Woods asked if there will be warehouse-type usage.

Mr. Ting stated any items on site will be strictly for retail.

Mr. Woods stated the term "social service" is not part of his client's application and is something that was raised by City staff. Mr. Woods asked that Mr. Berger be sworn in to provide testimony.

Mr. Woods asked Mr. Berger what prompted staff to consider this application as a Social Service use.

Mr. Berger stated when the original application was received, staff looked at the Harvest Time International website. Mr. Berger stated the website showed that the Port Orange site would be relocating to Daytona Beach and the Port Orange site currently has some Social Service activities. Mr. Berger stated it is included as part of the staff report that there is information included at the website regarding assistance to those who may need social service assistance and programs. Mr. Berger stated what was shown at the website did not appear to be retail but social service.

Mr. Woods asked if Mr. Berger typically looks at websites when applications are made.

Mr. Berger said yes. Mr. Berger stated earlier in the year an application was made for an unemployment office which was actually for a day labor facility, which is prohibited in a redevelopment area.

Mr. Woods asked if the activities at another location can determine what can be done in Daytona Beach.

Mr. Berger stated no but he relied on the fact that the website stated the Port Orange site was relocating to Daytona Beach.

Mr. Woods asked if it is Mr. Berger's understanding that a food pantry is proposed for Daytona Beach.

Mr. Berger stated it does not appear to be a food pantry on the application but it remains a concern since staff has not seen an operation yet. Mr. Berger stated staff is concerned that a food pantry could be part of this.

Mr. Woods asked what the city's recourse would be should a food pantry be placed at this site.

Mr. Berger stated staff would ask that any use that is not permitted be terminated which would require Code Enforcement action and there is a tremendous cost to terminate such a process.

Mr. Woods asked if there is any use other than retail contemplated for the property.

Mr. Berger stated that is where the problem lies and while a retail component may be proposed, there may be retail which is conducting itself as a social service. Mr. Berger stated the proposal includes a voucher system and the intention to assist people who have certain social needs.

Mr. Woods asked if the applicant made representation that it will agree with all terms that have been asked of them by staff.

Mr. Berger stated at that point, yes.

Mr. Woods stated did the city decide not to enter into an agreement for the site.

Mr. Berger stated that is correct because there is still concern over the social service aspect.

Mr. Woods stated social service is not defined and staff had stated that an amendment to the Planned Development could be a process to provide a social service.

Mr. Berger stated staff determined that an amendment to the Planned Development would not work.

Mr. Woods stated the City of Daytona Beach feels it bears the cost for social services for not only Daytona Beach but other areas as well, including Flagler County. Mr. Woods stated if a social service is to be established in Daytona Beach, the city compares what is currently provided in the area of social service and will only approve a new social service if it is determined that there is a deficiency in the need for that particular social service. Mr. Woods stated it would be reviewed on a case-by-case basis on the public use process. Mr. Woods asked how a determination is made without there being a definition of social service in the Land Development Code.

Mr. Berger stated we don't have certainty until the application is before the City Commission and staff would make a recommendation.

Mr. Woods asked if the nature of the product that is being sold is a determining factor.

Mr. Berger said no.

Mr. Woods asked if the entity that is applying is the determining factor.

Mr. Berger said no.

Mr. Woods stated it cannot be determined what is permitted until the application is submitted. Mr. Woods asked if a BTR was provided for CVS, Walgreen's WalMart, and Target in Daytona Beach.

Mr. Berger said yes.

Mr. Woods stated Walgreen's provides a prescription savings club that provides discounts and financial assistance for approved members. Mr. Woods stated Target and WalMart provide low cost prescriptions and that use falls under the definition of social service. Mr. Woods asked how those operations can be permitted when Harvest Time International is not being permitted when it has been stated that Harvest Time International only wants to do retail use. Mr. Woods stated staff is applying an ambiguous standard. Mr. Woods stated he does not believe there are grounds to deny the Business Tax Receipt for a retail use. Mr. Woods asked that the Board deny staff's recommendation or, if approved, that the applicant provide affirmation that there will not be a food pantry or voucher program.

Board comments:

Mr. Hurt stated he read that in other areas, Harvest Time International has provided medical services. He asked if that is planned for this site.

Mr. Woods stated the site will be strictly retail and there will not be a membership fee.

Mr. Hurt asked if there will be counselors on site for financial planning.

Mr. Woods said no. Mr. Woods stated the Port Orange facility does provide more services and the location will remain open in Port Orange.

Mr. Servance asked if the proposed retail use will be open to the public.

Mr. Woods said yes.

Mr. Barhoo stated he would like Harvest Time International defined since it appears to provide one set of services at the Port Orange location but something else is proposed for Daytona Beach. Mr. Barhoo asked if there are any other Harvest Time International sites that operate like what is proposed for the Daytona Beach site.

Mr. Woods stated the representation has been made of what is proposed for the Daytona Beach site and this is a new concept for Harvest Time International.

Mr. Newman stated prohibitive uses are defined and food banks are prohibited uses. Mr. Newman stated the Harvest Time International website indicated that they are moving to this new location and it is reasonable to assume that that is what is in mind. Mr. Newman stated he understands that building work was started without proper permits so there is a trust issue. Mr. Newman asked if the website has been changed.

Mr. Woods stated the website has been changed. Mr. Woods stated the nature of a business license is to have a business license in place in order to open the business. Mr. Woods stated this property has been vacant for some time and he does not believe the level of work that was done at the site triggers the need for the BTR license. Mr. Woods stated he believes the landlord can make improvements to the property.

Rich Walton, Planning Director, stated he did not believe the city has been inside the building to see what work has been done. Mr. Walton stated it is his understanding that electrical work was being done on the inside.

Jim Morris, Deputy City Manager, stated the applicant is representing that transactions at the proposed site will be cash. Mr. Morris stated that is not what is being reviewed and representations are being made after the fact. Mr. Morris stated work was being done inside the site without permits and permits are required for the work to be accomplished. Mr. Morris stated an undefined term must be defined by outside sources that are reliable. Mr. Morris stated that is irrelevant to the question before the Board and is an effort to confuse the issue. Mr. Morris stated he has not heard any testimony tonight that rebuts what is in the staff report and record. Mr. Morris stated the burden is not on the city to provide that it is right; the burden is on the applicant to provide that the city is wrong. Mr. Morris stated the applicant could file a new application that would affirm what they have said this evening and during their settlement negotiations. Mr. Morris stated the focus of the staff determination is a food pantry and voucher system and those are defined by the Comprehensive Plan to be social services.

Public Comments:

Anne Ruby, 137 Park Avenue, stated the applicant says they want to do retail, not a voucher system. Ms. Ruby stated the proposed business would bring jobs to the area. Ms. Ruby stated the proposed project sits right in the middle of the poorest area of the city. Ms. Ruby stated to make it difficult for the applicant does not make sense. Ms. Ruby stated the applicant wants to bring jobs and business to an area that desperately needs it. Ms. Ruby asked if the business license is renewed annually and, if so, it could not be renewed the following year if they are providing social services at the site.

Mr. Woods stated if the appeal is denied, the exact same information will be presented by the applicant. Mr. Woods stated affidavits have been submitted to the city and those could be included as an addendum to the approval.

Mr. Walton stated during Mr. Woods' testimony, he asked how someone could prove they are a social service. Mr. Walton stated there is a process for becoming a social service and that is approval by the City Commission. Mr. Walton stated that is the only group that has the authority to make that determination and the

criteria in the Code is based on need. Mr. Walton asked if that was told to Mr. Woods' client.

Mr. Woods said yes but this is not a social service.

Ms. Avallone stated this Board is the final decision maker and an appeal will go to the court. Ms. Avallone stated that the Land Development Code specifically states that appeals can be supplemented by arguments and additional evidence presented at this hearing. Ms. Avallone stated once it goes forward to the court, it will be based on this record only so she encouraged the Board members to make their comments on the record so there is sufficient basis for a review.

Mr. Hurt asked if the applicant resubmit an application based on what was presented this evening.

Mr. Woods stated the issue of vouchers came from the city staff after the application was submitted by digging through the website and was not part of the application. Mr. Woods stated he has an affidavit signed by Harvest Time International indicating what they will be doing at the proposed site. Mr. Woods submitted the affidavit for the record.

Mr. Walton asked if the affidavit includes anything about vouchers.

Mr. Hurt stated the affidavit says 3% of sales will be through vouchers.

Mr. Woods stated that is company-wide.

Mr. Woods stated the application does not reference social services. Mr. Woods stated that comes from staff looking into what the website represents.

Mr. Hurt asked if there could be more dialogue between the city and Harvest Time to resolve the issue.

Mr. Woods stated he had an agreement but the city told them this is the applicant's avenue of recourse.

Mr. Barhoo asked how a business can operate outside their vision or mission and he has not received sufficient evidence to clarify that.

Mr. Woods stated the House Next Door in DeLand decided to operate a revenue-generating source and as a result opened a day care facility. Mr. Woods stated the day care facility is not treated as a social service.

Mr. Barhoo stated House Next Door and the day care center are operated as two separate entities, not one.

Mr. Morris stated the affidavit does not state that the applicant will conduct retail sales. Mr. Morris stated the applicant is asking the Board to rely on an affirmation that tells you what they won't do, not what they will do.

Mr. Woods stated the application states that the business will be retail. Mr. Woods stated the affidavit is to address city concerns that social services will not be provided.

Mr. Walton stated the first application stated that the business would be retail and the second one did not.

Mr. Newman stated Big Lots and Tuesday Morning do not operate social services in other locations. Mr. Newman stated the mention of Walgreen's and other places providing low cost medications is not listed in the City's prohibited uses.

Board Motion:

A motion was made by Mr. Newman, seconded by Mr. Neal, to uphold City staff's position to not approve the request of Harvest Time International, Inc., DEV2017-037, in accordance with the staff report as presented. The motion failed (3-3 with Mr. Neal, Mr. Servance, and Mr. Hurt voting no).

A motion was made by Mr. Hurt, seconded by Mr. Servance, to modify the request of Harvest Time International, Inc., DEV2017-037, in whole or in part, so that the use is 100% retail use and nothing else. The motion carried (5-1 with Mr. Newman voting no).

New Items:

5. **Rezoning – Amended and Restated 530 Mason Planned District Agreement, DEV2016-120**

Staff Presentation:

Dennis Mrozek, Planning Manager, presented the staff report which is included as part of the packet. Mr. Mrozek stated the original PD zoning was done in April, 2013, but the development agreement has lapsed. Mr. Mrozek stated the applicant has a new owner and proposes a single phase development, including parking lot improvements, landscaping, and buffering. Mr. Mrozek stated the applicant proposes improvements to the building but is requesting modifications to the design standards. Mr. Mrozek stated modifications requested are landscaping, building design, and parking.

Mr. Barhoo asked if there will be any problems with ingress/egress with the proposed reduction of parking spaces.

Mr. Mrozek stated staff has reviewed the site and there are no objections from the City's traffic reviewer.

Applicant's Presentation:

Omar Badran, 530 Mason Avenue, stated he is the owner of the subject property and the site will be used for an engraving and sign printing business. Mr. Badran stated a neighborhood meeting was held and the neighbors are supportive of the project.

Public Comments:

Anne Ruby, 137 Park Avenue, stated she attended the neighborhood meeting and the neighbors were enthused about the project.

Linda Smiley, 357 Manhattan, stated she attended the neighborhood meeting and the neighbors in attendance were in favor of this project.

Board Action:

A motion was made by Mr. Hurt, seconded by Mr. Newman, to approve Rezoning – Amended and Restated 530 Mason Planned District Agreement, DEV2016-120, in accordance with the staff report as presented. The motion carried unanimously (6-0).

6. **Site Plan – Sam's Club, DEV2015-110**

Staff Presentation:

Doug Gutierrez, Senior Planner, presented the staff report which is included as part of the packet. Mr. Gutierrez stated the project is proposed to be located at 1460 Cornerstone. Mr. Gutierrez stated a traffic study for the project was reviewed and approved by Volusia County Engineering Department.

Mr. Newman asked if Volusia County or Sam's Club will do the road improvements.

Applicant's Presentation:

Karl Sanders, 200 W. Forsyth, Jacksonville, Florida, spoke representing the applicant. Mr. Sanders stated Volusia County will not do the construction of the road improvements. Mr. Sanders stated a portion of the road improvements will be done by Sam's Club and a portion by NADG which owns the 3 outparcels.

Public Comments:

There were no public comments.

Board Motion:

A motion was made by Mr. Barhoo, seconded by Mr. Servance, to approve Site Plan – Sam’s Club, DEV2015-110, in accordance with the staff report as presented. The motion carried unanimously (6-0).

7. **Rezoning to Planned Development-General (PD-G) – Living Faith World Ministries, DEV2017-036**

Mr. Barhoo stated he was the applicant for this item and has filed a Conflict of Interest form with the City.

Rose Askew, Planner, presented the staff report which is included as part of the packet. Ms. Askew stated the rezoning request is to allow for the construction of a classroom building, multi-purpose school building and expansion of the Sanctuary with associated landscaping and infrastructure. Ms. Askew stated the applicant is requesting two identification signs at the two entrances on 8th Street, wall signage, and two monument signs. Ms. Askew stated the applicant is also requesting one Electronic Message Center to be located on Derbyshire Road. Ms. Askew stated there is one outstanding comment from Public Utilities which must be addressed.

Ms. Askew stated a modification is required to allow a private school with 20 or more students at this site. Ms. Askew stated modifications are also requested regarding setbacks, vehicular access, and landscaping reduction. Ms. Askew stated the applicant proposes to not have any flowering shrubs along 8th Street and staff recommends that the applicant place the flowering shrubs in other areas of the property.

Ms. Askew stated the Land Development Code only allows Electronic Messaging Center signs on properties of 8 acres or larger and that have at least 600 feet of frontage. Ms. Askew stated the Code does not permit multiple color background or graphic EMC signage.

Mr. Newman asked about the setback for the building and the vehicular access on 8th Street. Mr. Newman asked if they are pre-existing and if there was compliance when the building was originally constructed.

Ms. Askew stated she was not sure when the site was constructed.

Applicant's Presentation:

Kim Buck, Alann Engineering, 880 Airport Road, Ormond Beach, Florida spoke representing the applicant. Ms. Buck provided hand-outs that were not included in the packet. Ms. Buck stated an additional tree is proposed for the landscape buffer along Derbyshire. Ms. Buck stated a reduction along the perimeter for the flowering shrubs is requested for security and what is proposed is similar to what is used at Volusia County schools. Ms. Buck stated there is no objection to placing the landscaping throughout the site but just not on the perimeter. Ms. Buck stated only one monument sign is requested and that would be the EMC sign at the corner of 8th Street and Derbyshire. Ms. Buck stated the two existing monument signs would be removed. Ms. Buck stated a directional sign is requested at each entrance. Ms. Buck stated it is proposed to re-roof the existing facility with a metal roof and to paint the entire facility so it matches the new buildings.

Mr. Hurt stated he has a problem with the EMC sign since it deviates from the City's Land Development Code. Mr. Hurt stated if an EMC sign is permitted at this site, there will be many others requesting similar signs.

Ms. Buck stated it is a benefit to a church and school campus to have changeable copy.

Mr. Hurt stated you can have changeable copy but not in LED. Mr. Hurt stated he does not want to set a precedence.

Ms. Buck stated she did not foresee the signage constantly changing.

Ms. Avallone stated graphics are not permitted on the display screen and text cannot change less than every 60 seconds.

Tony Barhoo, 1355 Cadillac Drive, stated there will be a day care and school through the 8th grade. Mr. Barhoo stated the school will operate 5 days a week. Mr. Barhoo stated he wants to upgrade the area and the site is used for many community meetings. Mr. Barhoo stated the codes will be followed for the signage. Mr. Barhoo stated the 25% landscaping requirement will be met.

Public Comments:

There were no public comments.

Board Motion:

A motion was made by Mr. Newman, seconded by Mr. Neal, to approve Rezoning to Planned Development-General (PD-G), Living Faith World Ministries, DEV2017-036, in accordance with the staff report as presented, with

the condition that the 25% net amount of landscaping be met. The motion carried unanimously (5-0).

8. **Amendment to the Land Development Code, Section 4.2.B – DEV2017-068**

Jim Morris, Deputy City Manager, presented the staff report which is included as part of the packet. Mr. Morris stated there are existing subdivisions with fairly large lots; and in some circumstances, someone could potentially buy a lot and split it and place a home between the two existing homes. Mr. Morris stated it could be possible because a smaller lot size is permitted. Mr. Morris stated staff would like the Planning Board to direct staff to draft regulations and bring them back to the Planning Board for their consideration at their next meeting.

Mr. Walton stated minimum lot size was identified in the code and now staff is requesting to modify the aspect of existing lots in Section 4.2.B. Mr. Walton stated there may be other sections of the code that will have to be addressed as well.

Public Comments:

There were no public comments.

Board Motion:

A motion was made by Mr. Hurt, seconded by Mr. Barhoo, to direct staff to provide a detailed proposal for the Planning Board's consideration at the July meeting that will address subdividing of lots different than what was originally intended in accordance with the staff report as presented for DEV2017-068. The motion carried unanimously (6-0).

9. **Other Business**

a. Downtown Redevelopment Board Report

Ms. Washington stated the Downtown Redevelopment Board met and received an update on projects from staff.

b. Midtown Redevelopment Area Board Report

Mr. Barhoo stated he was unable to attend the Midtown Redevelopment Area Board meeting but noted there were routine items on the agenda with no action items scheduled.

c. Beachside Redevelopment Area Board Report

Mr. Newman stated the Beachside Redevelopment Area Board met on June 14 but did not have a quorum. Mr. Newman stated there was discussion about locating a tattoo parlor on Main Street and the city being more amenable to bringing in new business.

d. Public Comments

Linda Smiley, 357 Manhattan, stated she was pleased to see the Board ask so many questions about the items presented this evening. Ms. Smiley stated she feels that sometimes it seems the city does not want new development and feels the city makes it difficult for people. She stated she is in favor of the proposed tattoo parlor on Main Street. Ms. Smiley stated Humphrey's Jewelers has permitted an art display in the storefront window with donated art work from ArtHaus.

e. Staff Comments

Mr. Walton stated Board members are required to complete their financial disclosure forms by July 3, 2017.

f. Board Comments

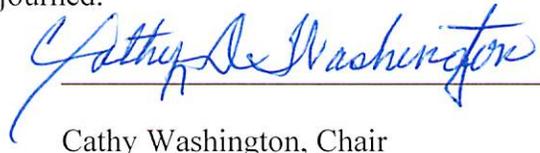
Mr. Hurt stated he hopes Harvest Time International will bring something back to city staff that will be acceptable.

Ms. Washington stated at the website, it did say that Harvest Time was moving from their Port Orange location. Ms. Washington stated when she first moved to the area, she worked with Harvest Time International and students from Bethune-Cookman worked with them to get community service points.

Mr. Barhoo stated he did not feel there was enough evidence presented and maybe should have been presented more clearly by the applicant.

Adjournment

There being no further business, the meeting adjourned.


Cathy Washington, Chair

ATTEST:


Secretary